

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-124

AN ORDER to renumber RL 5.02 (2); to renumber and amend RL 5.02 (1); to amend RL 5.01, 5.02 (3) and 5.06 (1) and (2); and to create RL 5.02 (1) and (7) and 5.08 (3m), relating to charitable organizations.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

08-31-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-25-98 REPORT SENT TO AGENCY.

RNS:DD:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☒

NO ☐

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☐

NO ☒

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

NO ☒

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CLEARINGHOUSE RULE 98-124

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. In s. RL 5.02 (7), the exception to the definition of "solicit" is arguably inconsistent with pertinent statutes. There is nothing in subch. III of ch. 440, Stats., to suggest that mailing of requests for contributions by a professional fund-raiser or fund-raising counsel should not trigger registration requirements when the contents of the mailing only identify a charitable organization as the person requesting the contributions and do not include the name of the professional fund-raiser or the fund-raising counsel. Note, also, that the department's analysis of the provision only refers to professional fund-raisers; the text of the rule also includes fund-raising counsels.

b. The department should review the authority for the provision in s. RL 5.06 (1) that authorizes the department to deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor, subject to certain employment discrimination laws. Section 440.42 (1) (b), Stats., requires the department to register a charitable organization that meets all of the stated requirements. Section 440.475, Stats., specifies when the department may deny or limit a registration. Arguably, neither of these provisions authorizes the proposed authority to deny or limit registration based on a felony or a misdemeanor conviction.

2. Form, Style and Placement in Administrative Code

a. In the department's analysis, s. 440.42 (8), Stats., should be listed as a statute authorizing promulgation of the rule. The list of statutes being interpreted appears excessive and lacking in specificity (i.e., pertinent subunits of a listed statute should be referenced).

b. In the treatment clause of SEC. 2, “, as renumbered,” should follow “RL 5.02 (2) (a).” The department should consider merely cross-referencing the statutory definition of “charitable organization,” rather than repeating it in the rule.

c. In s. RL 5.02 (7), “given” should follow “meaning” in the first sentence.

d. The amendment of s. RL 5.06 (2) (title) should be shown by strike-throughs and underscores. [See s. 1.05 (3) (b), Manual.]

e. Section RL 5.08 (3m) can be revised to read: “The \$100,000 contribution limit in s. 440.42 (3) (b), Stats., is raised to \$175,000 if a charitable organization has received during its most recently completed fiscal year one or more contributions from one contributor totaling \$75,000 or more.”

4. Adequacy of References to Related Statutes, Rules and Forms

In s. RL 5.02 (7), the statutory reference should be to s. 440.41 (8), Stats.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION	:	LICENSING ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 98-124)

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form proposed rules relating to charitable organizations.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



Tommy G. Thompson
Governor

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING



Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
E-Mail: dori@mail.state.wi.us
(608) 266-2112
FAX#: (608) 267-0644

Administrative Rules in Final Draft Form

Department of Regulation and Licensing

Rule: Ch. RL 5

Relating to: Charitable Organizations

Clearinghouse Rule: No. 98-124

Regulatory Boards

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**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 98-124
DEPARTMENT OF REGULATION : (s. 227.19 (3), Stats.)
AND LICENSING :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

Most of the changes in this rule proposal were recommended by the department's Legal Services Rules Review Committee to enhance readability and to improve grammar and style.

One significant change, however, creates criteria to help the department determine whether a person is a professional fund-raiser or a fund-raising counsel and whether the person is required to register with the department. The criteria were developed after a review of several dozen files which contained considerable correspondence between the department and persons engaged in fund-raising activities. It appeared to the department that the key differentiating elements relating to the need to register were whether the person was soliciting contributions in his, her or its name, or whether the person's name was not in the solicitation materials at all. These rules will provide clearer authority for the department to take actions based on these criteria.

V. NOTICE OF PUBLIC HEARING:

A public hearing was conducted by Cletus J. Hansen, on behalf of Secretary Marlene A. Cummings, on September 30, 1998. One person, Cheryl Gain, Business Ombudsperson in the Department of Commerce and a member of the Small Business Review Advisory Committee in the Department of Regulation and Licensing, registered in support of the rule proposal. No one testified at the hearing and no written comments were received from anyone after the hearing.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

1. Statutory Authority:

a. Language relating to soliciting contributions was removed from the definitions in the rule and a new s. RL 5.075 was created, stating the criteria that the department uses to evaluate whether a person is operating as a professional fund-raiser or a fund-raising counsel.

b. The proposed amendment relating to criminal convictions was retained; however, the department included in the analysis section of the rule proposal and the authority section of the rule a reference to s. 440.03 (13), created by 1997 Wisconsin Act 27.

2. Form:

a. The department included pertinent subunits of the statutes listed as authorizing promulgation of the rule.

b. The department followed the suggestion by cross-referencing the statutory definition of "charitable organization."

c. Because the department decided not to define "solicit," this suggestion became irrelevant.

d. The amendment is properly shown with underscoring.

e. The revision to the contribution limit was rewritten, as suggested.

4. Adequacy of References to Related Statutes, Rules and Forms:

The statutory reference was corrected.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules were reviewed by the department's Small Business Review Advisory Committee. The Committee stated that these proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION	:	LICENSING ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 98-124)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to **repeal** RL 5.02 (1) (a) and (b); to **renumber** RL 5.02 (2); to **renumber and amend** RL 5.02 (1) (intro.); to **amend** RL 5.01, 5.02 (3), 5.06 (1), (2) (title) and (2); and to **create** RL 5.02 (1), 5.075 and 5.08 (3m), relating to charitable organizations.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 440.42 (8), Stats.

Statutes interpreted: ss. 440.41 (1), (8), (9), 440.42 (1) (b), (3) (b), (8), 440.43 (1), (6) and s. 440.44 (1), Stats., and s. 440.03 (13), Stats., as created by 1997 Wisconsin Act 27.

SECTION 1 cites an additional statutory subsection as authority for the rules in Chapter RL 5. This citation has been added as additional authority for the department to deny or limit the application of a person convicted of a felony or misdemeanor, as provided in SECTION 7.

SECTION 2 rennumbers a subsection in order to list definitions alphabetically and this SECTION defines "charitable organization" by simply cross-referencing the definition in the statutes.

SECTION 3 repeals pars. (a) and (b) under s. RL 5.02 (1). These paragraphs were elements of the definition of "charitable organization."

SECTION 4 creates a definition of "central organization."

SECTION 5 rennumbers a subsection.

SECTION 6 amends the definition of "group return."

SECTION 7 cites a statute which specifies the registration fee for charitable organizations. This rule-making removes the specific fee from the rule which would have to be changed every time the statute changes. This SECTION also says that the department may deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor. Section RL 5.06 (1) currently permits the

department to ask a question relating to conviction; however, it does not permit the department to take any action when a conviction is discovered.

SECTION 8 provides criteria which the department may use to facilitate determining whether a person must register as a professional fund-raiser or a fund-raising counsel. The criteria make a distinction between the mechanical function of preparing and sending another person's mailings and the function of making a mailing under one's own name.

SECTION 9 increases from \$100,000 to \$175,000 the contribution limit which requires an audit with the opinion of an independent certified public accountant. This increase only applies when a charitable organization has received during its recently-completed fiscal year contributions from any number of contributors and the contribution or contributions of one contributor totals \$75,000 or more.

TEXT OF RULE

SECTION 1. RL 5.01 is amended to read:

RL 5.01 **Authority.** This chapter is adopted pursuant to ss. 227.11 (2), 440.42 (3) (am), 440.42 (8), and 440.455 (4), Stats., and s. 440.03 (13), Stats., as created by 1997 Wisconsin Act 27.

SECTION 2. RL 5.02 (1) (intro.) is renumbered RL 5.02 (2) and as renumbered amended to read:

RL 5.02 (2) "Charitable organization" ~~means any of the following:~~ has the meaning given in s. 440.41 (1), Stats.

SECTION 3. RL 5.02 (1) (a) and (b) are repealed.

SECTION 4. RL 5.02 (1) is created to read:

RL 5.02 (1) "Central organization" means a charitable organization that has one or more affiliated subunits under its general supervision and control, such as a chapter, local, post or unit.

SECTION 5. RL 5.02 (2) is renumbered RL 5.02 (2m).

SECTION 6. RL 5.02 (3) is amended to read:

RL 5.02 (3) "Group return" means a financial report submitted by a central, ~~parent or similar charitable organization for 2 or more charitable organizations which are affiliated with it.~~

SECTION 7. RL 5.06 (1), (2) (title) and (2) are amended to read:

RL 5.06 (1) APPLICATION FOR REGISTRATION. An applicant for registration as a charitable organization shall submit to the department an application on a form prepared by the department, a registration statement that complies with s. 440.42 (2), Stats., and a ~~\$15 registration fee~~ the fee specified in s. 440.42 (1) (b) 3., Stats. Pursuant to s. 440.42 (2) (m), Stats., the department may require information about a professional fund-raiser or fund-raising counsel whose services the charitable organization uses and information about whether any officers, directors, trustees or executive officers of the charitable organization have been convicted of a felony or a misdemeanor. Subject to ss. 111.321, 111.322 and 111.335, Stats., the department may deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor.

(2) (title) REGISTRATION OF A ~~PARENT OR~~ CENTRAL ORGANIZATION.

A central, ~~parent or similar charitable~~ organization may file a single application for registration of the central, ~~parent or similar charitable~~ organization and all of its affiliated subunits, provided that the central, ~~parent or similar charitable~~ organization has complete and direct control over the solicitation activities of all subunits, receives all contributions for its use or future distribution to the subunits and is accountable for all receipts and disbursements relating to the solicited contributions.

SECTION 8. RL 5.075 is created to read:

RL 5.075 Criteria relating to registration as a professional fund-raiser or a fund-raising counsel. (1) In determining whether a person is required to register as a fund-raising counsel under s. 440.43, Stats., or a professional fund-raiser under s. 440.44, Stats., the department evaluates the obligations of the person to determine whether the person's responsibilities are limited to preparing and sending mailings for a registered charitable organization as distinguished from the function of making a mailing under the person's own name.

(2) For the limited purpose of determining whether a person is required to register as a professional fund-raiser under s. 440.44, Stats., a person does not "solicit" in this state or employ, engage or provide, directly or indirectly, another person to "solicit in this state" as those terms are used in s. 440.41 (7), Stats., if all of the following apply:

- (a) The person mails requests for contributions.
- (b) The contents of the mailing identify a charitable organization as the person requesting the contributions.
- (c) The contents of the mailing do not include the name of the professional fund-raiser or the fund-raising counsel.

SECTION 9. RL 5.08 (3m) is created to read:

RL 5.08 (3m) EXCEPTION FOR CONTRIBUTION LIMIT REQUIRING AN AUDIT WITH OPINION. The \$100,000 contribution limit in s. 440.42 (3) (b), Stats., is raised to \$175,000 if a charitable organization has received during its most recently completed fiscal year one or more contributions from one contributor totaling \$75,000 or more.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____
Marlene A. Cummings, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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1/22/99